

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON SENATE BILL 386**

**Call to Order:** By **CHAIRMAN DUANE GRIMES**, on April 18, 2001 at 9:15 A.M., in Room 350 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Duane Grimes, Chairman (R)  
Rep. Jim Shockley, Chairman (R)  
Sen. Al Bishop (R)  
Rep. Tim Callahan (D)  
Sen. Mignon Waterman (D)  
Rep. Merlin Wolery (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Executive Action: SB 386 Amended  
HB 146 Amended

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This Free Conference Committee met on April 17, 2001 at 3:00 p.m. in Room 350. They only met for approximately 20 minutes and agreed to meet the following morning at 9:15 a.m. in Room 350 on April 18, 2001.

The following minutes start on 4-17-01 at 3:00 p.m. in Room 350.

**CHAIRMAN DUANE GRIMES** opened the meeting. He explained that there were two bills that were in Free Conference Committees. Those two bills were SB 386 and HB 146. He was Chairman of both and the House committee members were the same on both committees. He offered two ways to handle the situation. The preferable way would be for the committee to assume the Senate conferees were the same and discuss both bills at this time. Then the actual Senate conferees can sign off on the committee report or re-appoint new members and sign off on the committee report.

The only other way to do this would be to suspend action until the conferees could be switched on the Senate side for HB 146. He did not believe the two Senate conferees would mind if this committee dealt with both bills.

**CHAIRMAN GRIMES** asked **Valencia Lane** to explain where the bills were at that moment.

**Ms. Lane** explained that no merging of the two bills had taken place. The gray bill **EXHIBIT (frs87sb0386a01)** was introduced. She had done amendments to HB 146 to make it look like the gray bill. It was done by the request of the Dept. of Corrections. Senate Bill 386 still stood as it was.

**REP. JIM SHOCKLEY** explained that SB 386 was sponsored by one portion of the juvenile probation officers in the state and HB 146 was sponsored by the Dept. of Corrections with the support of the remaining juvenile probation officers. All players had met and hammered out the points that would be agreeable to all. That was the reasoning of putting the two bills together.

**SEN. MIGNON WATERMAN** offered that Sections 11 through 23 of the gray bill were essentially the basic portions. Sections 1 through 10 were the revisions to the Youth Court Act.

**Ms. Lane** felt that it was better to have both bills survive rather than putting all in one. House Bill 146 would contain the revision of the Youth Court Act and then take everything out of HB 146 that was not related to the intervention program and put that into SB 386. Amendments could be made to SB 386 and to HB 146.

**CHAIRMAN GRIMES** wanted to know what issues needed to be discussed.

**SEN. WATERMAN** felt that sections 11 through 23 of the gray bill would make the juvenile delinquency intervention programs permanent and districts may or may not participate.

**Ms. Lane** explained SB 386. Sections 11-23 go into more detail. It was somewhat confusing.

**REP. SHOCKLEY** said that SB 386 could very well have died the day before in the House. He offered to work on the bill thereby saving it for another day. He reiterated the compromise he had spoken of earlier and suggested the committee meet in the morning after everyone had a chance to look at the bills and the amendments that **Ms. Lane** would be working on.

**CHAIRMAN GRIMES** asked the Dept. of Corrections to tell what issues in the gray bill were important to them.

**REP. SHOCKLEY** said one of the concerns was the budgeting aspect. There had to be some provision to disallow a district judge from ordering a county to pay. Transportation was another issue. The Dept. wanted to control the transportation and let the budget go with the districts. He did not like that. If they were going to have a budget, they should control all aspects of the program which would include transportation. The cost containment review panel was also very important.

**CHAIRMAN GRIMES** then asked how it worked now in the pilot projects in regard to budgeting. **REP. SHOCKLEY** answered that they don't get to control it. Senate Bill 386 did not change that. The Dept. still controls the transportation under the pilot projects. House Bill 146 would change that.

**Susan Fox** added there was a coordination instruction in the gray bill that involved yet another bill on transportation that dealt with the court decisions and not the pilot projects. That bill was HB 30.

**Matt Robertson, Dept. of Corrections** said he had drafted the gray bill. The coordination instruction adapts everything that was done in HB 30 and makes it subsection 2 for out-of-state transportation.

**CHAIRMAN GRIMES** asked for an overview of the gray bill and what the difference was between that and SB 386.

**Mr. Robertson** offered they were two different bills. Senate Bill 386 would basically implement what they have had in the pilot projects on a voluntary basis. It did not have additional details of the Dept's handling of the Youth Court Act; it didn't have a cost containment review panel; it didn't have any additional definitions that need to be in statute concerning review boards, etc. Essentially, the gray bill was HB 146.

**Mike Ferriter, Dept. of Corrections** said the gray bill showed the compromise of all parties concerned. The compromise was that it is voluntary and the cost containment was now earmarked to be at least \$1 million. If a pilot district or a non-pilot district should exceed their allocations and wanted to tap into this \$1 million, they would have to go to the cost containment review panel and gain their approval to bring this money back into the districts.

Right now, if a district exceeds their allocations, they go to a cost containment review panel. That amount was \$300,000 because there are only 11 districts. Those that don't participate are not held accountable and the Dept. has no control over them.

**The meeting was adjourned till the following morning at 9:00 a.m. in Room 350 on 4-18-01.**

**CHAIRMAN GRIMES** called the meeting to order again. They were going to look at and discuss SB 386 and HB 146. They had been discussing the cost containment review panel and how it would now be applied every where in the state under **REP. SHOCKLEY'S** proposal. The other discussion was about the \$1 million appropriations. He directed them back to the cost containment problem.

**SEN. WATERMAN** questioned whether they could tell judges they do not have the authority to place someone and that they must live within a budget. There had not been much success heretofore.

**REP. TIM CALLAHAN** said that the statute reads currently the judge commits a juvenile to the Dept. of Corrections. The Dept., if they don't approve of the placement committee's recommendation and the judge's recommendation, could place the youth where they chose.

**SEN. AL BISHOP** remembered that the Judiciary Committee had curtailed the authority of the judge to give orders to the sheriff. **Ms. Lane** said that was in SB 176.

**Mike Ferriter, Dept. of Corrections**, said they were trying to avoid going there with that. They wanted to give the judicial districts a good, clear understanding of what their budget was to be. Then if they don't have enough money, they go to a peer review panel. This keeps people on their toes.

**SEN. WATERMAN** applauded their efforts, but she had seen peer review panels before and they were not effective.

**CHAIRMAN GRIMES** asked **Ms. Lane** to explain the amendments.

**Ms. Lane** handed out the first set of amendments

**EXHIBIT(frs87sb0386a02) SB038602.av1.** According to the editors, she had to add a section.

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Section 7 was the last addition but it was only an internal reference change. There were two or three other internal reference changes.

She started with the gray bill that **Matt Robertson** had done and determined what in the gray bill related to the intervention program. She pulled all the sections out of the gray bill, which was basically HB 146. The amendments to HB 146

**EXHIBIT(frs87sb0386a03) HB014606.av1** were handed out. It amended HB 146 to change the title and to remove the sections that were related only to the intervention program.

The amendments to SB 386, which was a substitute bill, are the same sections that used to be in HB 146.

What remains in HB 146 are the amendments only to 41-5-103, 41-5-203, 41-5-206 and 52-5-129. They appear as they are in HB 146.

She now talked about the tan bill **EXHIBIT(frs87sb0386a04)**. On page 2, correctional facility means a public or private "physically restricting facility designed to prevent a youth from departing at will for the purpose of how a delinquent youth is adjudicated.

**Mr. Robertson** offered that changes were made to find secure facilities and contract with them when Pine Hills or Riverside were maxed out. The original definition applied to any facility. It was implied that, wherever a youth was put, it would be a correctional facility. They wanted to make it clear that treatment facilities and group homes were not correctional facilities. Therefore the facilities should be secure. Under Medicaid laws, if a juvenile is placed in a correctional facility, they may not be eligible for Medicaid funding. They wanted to make sure other facilities would be eligible for those funds.

**REP. CALLAHAN** asked for clarification. **Mr. Robertson** answered that the facility would be eligible for Medicaid funding, if a juvenile is placed there. If it were defined as a correctional facility, there was concern at the Dept. that the federal government could read Montana's definition of correctional

facility as meaning anytime a youth was placed in a treatment facility, it meant a correctional facility. Their definition of a correctional facility would then make them ineligible for Medicaid.

**Ms. Lane** spoke to HB 146 and the amendments. Section 1 remained in the bill. The only change was the definition of correctional facility. Pages 3, 4, 5, 6 and 7 did not change. Section 2 was taken out and goes into SB 386. Section 3, 4, and 5 were taken out. Section 6 remained in HB 146 without change. Section 7 was taken out. Section 8 remained in without change. Sections 9, 10 and 11 were taken out. Section 12 remained in with some changes. The existing subsection 7, on page 19, was moved to page 18 as a new subsection 2. The reason being it was pre-judicatory detention and the subsections it was between were all post-judicatory detention. It was confusing to have them together. Section 7 went to a new section, subsection 2 on page 18. On page 18, line 21, "the" became "a" youth correctional facility. "From which the youth was released" was taken out. On page 19, subsection 5, which had become subsection 6, line 11, "recommendation to the department" was taken out and inserted "decision." On line 12, "In making this recommendation", "recommendation" came out and "decision" was inserted. This made it more clear.

Subsection 8, lines 29 and 30 were changed to read: "(8) If the decision made, under subsection 6, is to return a youth to the youth correctional facility and the youth....." The reasoning was arguments could be made that the original language would allow a juvenile who had been taken out of state and then paroled and the parole was revoked, he would have to be sent back to the correctional facility from which he had been released. This made it more clear.

Subsection 9 had been amended by #16 on page 3 of the amendments. It stated "If a decision is made. . . . is no longer overcrowded."

Section 13 on page 20 through Section 23, page 28, line 17 was taken out. That took care of HB 146.

**CHAIRMAN GRIMES** asked **REP. SHOCKLEY** to continue his discussion on cost containment review panel.

**REP. SHOCKLEY** continued that districts that do not come into the program of cost containment are going to have go to that panel and explain why they went over their budget. There was a carrot for districts who participate. If they save money, they can use it for other good things.

Another issue was probation officers were going to be able to control their transportation.

The counties will only be stuck for in-state transportation, if that is what the probation officer wants, or evaluations. That is in current law. If districts join the program, there is a preference for local and in-state treatment as opposed to out-of-state treatment. This all is in SB 386.

In HB 146, a youth who is awaiting trial in district court as opposed to youth court can be incarcerated in jail as opposed to a youth detention facility. Commitment was defined in HB 146.

There was another provision that helped the Dept. If a youth was sentenced to Pine Hills and then released at age 18, the Dept. can make him pay his restitution and continue treatment after 18.

**SEN. WATERMAN** had one issue. She suggested changing the word "committing a youth" to "transporting a youth" on page 14, subsection 3 of the amendments to SB 386.

**Mr. Robertson** felt that "transporting" would be a good change. There was a question about subsection 2. He felt that did not need a change of language.

**REP. SHOCKLEY** wondered about the word "may be paid for out of.." in subsection 2. He thought it could be "shall."

**REP. CALLAHAN** asked for clarification from the Dept.

**Mr. Robertson** explained how different types of transportation would be paid and from what accounts. Currently, in statute, the counties are required to pay for all in-state transportation. The Supreme Court ruled that out-of-state transportation had to be paid for by the state. That came from HB 30. In coordinating with HB 30, they made it clear that all in-state transportation would still be county expense. It was also made clear they could pay for their out-of-state transportation out of the account the Dept. is going to create for each judicial district from the Juvenile Placement Fund. In a pilot district, they can still pay for in-state transportation with their Juvenile Placement Fund monies if they want to. He could not see why they would and use that capped amount of money for in-state transportation when they could get the county to pay for it. In a non-pilot district, they would be restricted to making the county pay. It would be an incentive for counties to opt into the program.

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**Mr. Ferriter** commented that flexibility is a great option for judicial districts.

**REP. CALLAHAN** recapped that all out-of-state placement costs are borne by placement dollars and that comes out of the \$2 million. That is true for participating and non-participating counties. The only difference comes from in-state placement. The county has the option of using placement dollars or their own transportation dollars only if they are participating in the program.

**Ms. Lane** explained it is mandatory. In subsection 2, it states "must be borne by the youth court" and therefore "may" should not be changed.

**REP. SHOCKLEY** wanted an explanation on "may" as opposed to "shall."

**Mr. Robertson** believed that "shall" might be the better word. It was clear that it is for out-of-home and out-of-state placements.

**Ms. Lane** said again if it is changed to shall, the youth court would not be allowed to pay it out of any source.

**Mr. Robertson** said yes because if they don't pay it out of the account that the Dept. is creating, that would leave a loophole. They could pay for it out of that account or they could make the county pay for it.

**SEN. WATERMAN** felt that it had to be out of that account. It would be a violation of the Supreme Court order that the state pays for it if they would order the county to pay for it.

**REP. SHOCKLEY** said to use "shall" and make it very clear.

**SEN. WATERMAN** then returned to subsection 3 and suggested that it read "out of home within the state placements." Subsection 2 would say, "out-of-state placements" which is paid for by the state. Subsection 3 would apply only to participating districts for in state out-of-home placements. They would have the option of paying from their state funds or from county funds.

**CHAIRMAN GRIMES** wondered if a subsection 4 should be added to address in-state, non-participating districts.

**Ms. Lane** looked at subsection 2 and felt that covered the issue.



**Mr. Robertson** reiterated that it was important to make it flexible for the pilot districts to use their placement dollars for transportation if they wanted to.

**Ms. Lane** recapped the new thought. In 52-5-109, any reference to participating judicial districts would be taken out. They rehashed the differences between commitment and transportation costs.

**Mr. Ferriter** said that commitment costs are not defined in statute. Since it was not defined it could be argued pre, post, etc.

**CHAIRMAN GRIMES** felt they were getting into something that the committee should not be getting into.

**Ms. Lane** said she would make three subsections: subsection 1 would be commitment costs, subsection 2 would be transportation costs and divided up into a, b, and c, subsection 3 was not actually spoken of.

**Ms. Lane** asked to speak on the gray bill again. In two or three places, there was a statement that the court may not order a local government entity to pay for care, treatment, intervention or placement. To clarify this, she added a second sentence. "A court may order a local government entity to pay for evaluation and in-state transportation of a youth." This made it clear what they can and cannot order.

There was a short discussion on SB 176. There will probably be a conference committee on SB 176 and that committee should be aware of what is in SB 386.

**SEN. WATERMAN** moved **TO ADOPT THE AMENDMENTS (EXHIBIT 2) TO SB 386. The motion carried unanimously.**

**REP. SHOCKLEY** moved **TO ADOPT THE AMENDMENTS (EXHIBIT 3) TO HB 146. The motion carried unanimously. CHAIRMAN GRIMES HAD PROXY VOTES FOR SENATORS MCNUTT AND HALLIGAN.**

A standing committee report was prepared for SB 386 with **SENATORS GRIMES, WATERMAN, BISHOP and REP. SHOCKLEY, WOLERY, CALLAHAN.**

A standing committee report was prepared for HB 146 with **SENATORS GRIMES, MCNUTT, HALLIGAN and REP. SHOCKLEY, WOLERY, CALLAHAN.**

**ADJOURNMENT**

Adjournment: 10:15 A.M.

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SEN. DUANE GRIMES, Chairman

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MARY GAY WELLS, Secretary

DG/MGW

**EXHIBIT** (frs87sb0386aad)